

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

11 EMILY WEIMORTZ,

No. 2:21-cv-0565 DB

12 Plaintiff,

ORDER

13 v.
14 KILOLO KIJAKAZI, Acting
15 Commissioner of Social Security¹,

16 Defendant.

17
18 This matter is before the court on plaintiff's motion for attorney's fees pursuant to the
19 Equal Access to Justice Act ("EAJA").² (ECF No. 20.) Plaintiff brought this action seeking
20 judicial review of a final administrative decision denying plaintiff's application for Disability
21 Insurance Benefits under Title II of the Social Security Act. (ECF No. 1.) On January 26, 2022,
22 the court entered the parties' stipulated remand and entry of judgment in plaintiff's favor. (ECF
23

24 ¹ After the filing of this action Kilolo Kijakazi was appointed Acting Commissioner of Social
25 Security and has, therefore, been substituted as the defendant. See 42 U.S.C. § 405(g) (referring
26 to the "Commissioner's Answer"); 20 C.F.R. § 422.210(d) ("the person holding the Office of the
Commissioner shall, in his official capacity, be the proper defendant").

27 ² Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant
28 to Both parties have previously consented to Magistrate Judge jurisdiction over this action
pursuant to 28 U.S.C. § 636(c). (See ECF No. 13.)

1 No. 18.) On April 25, 2022, plaintiff filed a motion seeking attorney’s fees in the amount of
2 \$3,251.60, payable to plaintiff’s counsel pursuant to an agreement. (ECF No. 20.) Defendant
3 “does not object to a total EAJA award in the amount of \$3,251.60,” payable to plaintiff. (ECF
4 No. 22 at 2.)

5 **STANDARDS**

6 The EAJA provides that “a court shall award to a prevailing party . . . fees and other
7 expenses . . . incurred by that party in any civil action . . . brought by or against the United States .
8 . . unless the court finds that the position of the United States was substantially justified or that
9 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); see also Gisbrecht v.
10 Barnhart, 535 U.S. 789, 796 (2002). “It is the government’s burden to show that its position was
11 substantially justified or that special circumstances exist to make an award unjust.” Gutierrez v.
12 Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001).

13 A “party” under the EAJA is defined as including “an individual whose net worth did not
14 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The
15 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).
16 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the
17 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final
18 resolution of the case.” Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§
19 2412(d)(1)(C) & 2412(d)(2)(D)).

20 A party who obtains a remand in a Social Security case is a prevailing party for purposes
21 of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-01 (1993) (“No holding of this Court has
22 ever denied prevailing-party status . . . to a plaintiff who won a remand order pursuant to sentence
23 four of § 405(g) . . . , which terminates the litigation with victory for the plaintiff.”). “An
24 applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the
25 denial of her benefits is reversed and remanded regardless of whether disability benefits
26 ultimately are awarded.” Gutierrez, 274 F.3d at 1257.

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ANALYSIS

2 Here, the court finds that plaintiff is the prevailing party, that plaintiff did not unduly
3 delay this litigation, and that plaintiff's net worth did not exceed two million dollars when this
4 action was filed. (ECF No. 2.) With respect to substantial justification, “[s]ubstantial
5 justification means ‘justified in substance or in the main—that is, justified to a degree that could
6 satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir. 2014) (quoting
7 Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the government’s position
8 must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at 870 (quoting Pierce v.
9 Underwood, 487 U.S. 552, 565 (1988)). “[T]he position of the United States includes both the
10 government’s litigation position and the underlying agency action.” Campbell v. Astrue, 736
11 F.3d 867, 868 (9th Cir. 2013) (quoting Meier, 727 F.3d at 870); see also Shafer v. Astrue, 518
12 F.3d 1067, 1071 (9th Cir. 2008) (“the relevant question is whether the government’s decision to
13 defend on appeal the procedural errors committed by the ALJ was substantially justified”). “In
14 determining whether a party is eligible for fees under EAJA, the district court must determine
15 whether the government’s position regarding the specific issue on which the district court based
16 its remand was ‘substantially justified’—not whether the ALJ would ultimately deny disability
17 benefits.” Gardner v. Berryhill, 856 F.3d 652, 656 (9th Cir. 2017).

18 As noted above, “[i]t is the government’s burden to show that its position was
19 substantially justified.” Meier, 727 F.3d at 870. Here, there is no basis for the court to find that
20 the government’s position was substantially justified.

21 The EAJA expressly provides for an award of “reasonable” attorney fees. 28 U.S.C. §
22 2412(d)(2)A). Under the EAJA, hourly rates for attorney fees have been capped at \$125.00 since
23 1996, but district courts are permitted to adjust the rate to compensate for an increase in the cost
24 of living.³ See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140, 1147-49 (9th Cir.

25 ³ In accordance with the decision in Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir.
26 2005), and Ninth Circuit Rule 39-1.6, the Ninth Circuit Court of Appeals maintains a list of the
27 statutory maximum hourly rates authorized by the EAJA, as adjusted annually. The rates may be
28 found on the Court's website. See <http://www.ca9.uscourts.gov>. Here, plaintiff's requested
attorney rates are equal to the statutory maximum rates established by the Ninth Circuit. (ECF
No. 21-21.)

1 2001); Atkins, 154 F.3d at 987. Determining a reasonable fee ““requires more inquiry by a
 2 district court than finding the product of reasonable hours times a reasonable rate.”” Atkins, 154
 3 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983) (internal citations omitted)).
 4 The district court must consider ““the relationship between the amount of the fee awarded and the
 5 results obtained.”” Id. at 989 (quoting Hensley, 461 U.S. at 437).

6 Here, plaintiff’s fee motion seeks compensation for 14.93 hours of attorney time, for a
 7 total award of \$3,251.60. (Pl.’s Mot. (ECF No. 20) at 1.) The court finds the hours expended to
 8 be reasonable when compared to the time devoted to similar tasks by counsel in like social
 9 security appeals coming before this court. See Clark v. Colvin, No. 2:14-CV-0851 DB, 2016 WL
 10 4179803, at *4 (E.D. Cal. Aug. 8, 2016) (finding 67.25 hours to be a reasonable amount of time);
 11 Boulanger v. Astrue, No. CIV S-07-0849 DAD, 2011 WL 4971890, at *2 (E.D. Cal. Oct. 19,
 12 2011) (finding 58 hours to be a reasonable amount of time); Watkins v. Astrue, No. CIV S-06-
 13 1895 DAD, 2011 WL 4889190, at *2 (E.D. Cal. Oct. 13, 2011) (finding 62 hours to be a
 14 reasonable amount of time); Vallejo v. Astrue, No. 2:09-cv-03088 KJN, 2011 WL 4383636, at *5
 15 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to be a reasonable amount of time); see also Costa
 16 v. Commissioner of Social Sec. Admin., 690 F.3d 1132, 1137 (9th Cir. 2012) (“District courts
 17 may not apply de facto caps limiting the number of hours attorneys can reasonably expend on
 18 ‘routine’ social security cases.”). See generally Moreno v. City of Sacramento, 534 F.3d 1106,
 19 1112 (9th Cir. 2008) (“By and large, the court should defer to the winning lawyer’s professional
 20 judgment as to how much time he was required to spend on the case; after all, he won, and might
 21 not have, had he been more of a slacker.”).

22 Accordingly, after carefully reviewing the record and the pending motion, the court
 23 declines to conduct a line-by-line analysis of counsel’s billing entries. See, e.g., Commissioner,
 24 I.N.S. v. Jean, 496 U.S. 154, 161-62 (1990) (“the EAJA—like other fee-shifting statutes—favors
 25 treating a case as an inclusive whole, rather than as atomized line-items”); Stewart v. Sullivan,
 26 810 F. Supp. 1102, 1107 (D. Haw. 1993); Duran v. Colvin, No. 2:11-cv-2978 DAD, 2013 WL
 27 5673415, at *2 (E.D. Cal. Oct. 17, 2013).

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1 However, an attorney fee award under the EAJA is payable to the litigant and is therefore
2 subject to a government offset to satisfy any pre-existing debt owed to the United States by the
3 claimant. Astrue v. Ratliff, 560 U.S. 586, 592-93 (2010). Subsequent to the decision in Ratliff,
4 some courts have ordered payment of the award of EAJA fees directly to plaintiff's counsel
5 pursuant to plaintiff's assignment of EAJA fees, provided that the plaintiff has no debt that
6 requires offset. See Blackwell v. Astrue, No. CIV 08-1454 EFB, 2011 WL 1077765, at *5 (E.D.
7 Cal. Mar. 21, 2011); Dorrell v. Astrue, No. CIV 09-0112 EFB, 2011 WL 976484, at *2-3 (E.D.
8 Cal. Mar. 17, 2011); Calderon v. Astrue, No. 1:08-cv-01015 GSA, 2010 WL 4295583, at *8 (E.D.
9 Cal. Oct. 22, 2010); Castaneda v. Astrue, No. EDCV 09-1850-OP, 2010 WL 2850778, at *3
10 (C.D. Cal. July 20, 2010). The Court will incorporate such a provision in this order.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

13 1. Plaintiff's motion for attorney fees under the Equal Access to Justice Act (ECF No. 20)
14 is granted;

15 2. Plaintiff is awarded \$3,251.60 in attorney fees and cost under 28 U.S.C. § 2412(d); and

16 3. Defendant shall determine whether plaintiff's EAJA attorney's fees are subject to any
17 offset permitted under the United States Department of the Treasury's Offset Program and, if the
18 fees are not subject to an offset, shall honor plaintiff's assignment of EAJA fees and shall cause
19 the payment of fees to be made directly to plaintiff's counsel pursuant to the assignment executed
20 by plaintiff.

21 | DATED: JUNE 30, 2022

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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